



Copyright Protection for Wood Mask Artists: a Regulatory Analysis

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Abstract

Wood Masks are works of art inherited from ancestors that are still produced in Indonesia. But in its development, apart from facing quality challenges, another challenge is the protection of its creators. The easy plagiarism of works is the reason the competition for works becomes unhealthy. A legal breakthrough is needed so that the creator of the work gets moral and economic protection. This research was conducted normatively with a statutory and conceptual approach, the data collected was secondary data. The results of the study indicate that there is a weakness in the substance of the offense which is the complaint offense, in addition to low public literacy, the registration of works in the government is low.

I. Introduction

Copyright is one part of IPR that has exclusive rights. The definition of copyright in Law no. 28 of 2014 concerning Copyright (hereinafter referred to as Copyright Law) is the exclusive right of the creator that arises automatically based on declarative principles after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. There are two exclusive rights contained in copyright, namely moral rights and economic rights, this is regulated in the Copyright Law. One of the protected works based on Article 40 paragraph 1 of the Copyright Law is a song or music with or without text (letter d). A song or musical work is a complete creation consisting of elements of a song or melody, poetry or lyrics and arrangements, including the notation, in the sense that the song or music constitutes a single copyrighted work (Marbun et al., 2013). The meaning of the word whole is that the song/music is a unified work of copyright (Fadhila, 2018).

Basically the concept of IPR is a concept that is applied in developed countries and exported to other countries, including Indonesia. The concept of IPR protection which is the concept of protection from developed countries which basically prioritizes individualism. Meanwhile, Indonesian society is more communalistic. The consequence of a communalistic society, the concept of property rights is also characterized by property rights that serve the interests of the community ([Irawan, 2011](#)).

The importance of copyright and name writing is still minimally recognized, because people in Indonesia are still traditional and consider a work of art to be enjoyed by others and more inclined to accept the exploitation of their work, and is considered a normal thing, a mistake if it is considered as a normal thing, happen. The importance of protecting copyrighted works as an expression of traditional culture, namely the art of carving wooden sculptures to obtain legal protection in accordance with Article 1 paragraph 1 of the Copyright Law. In the craftsmanship of carving wooden masks, to get legal protection.

Masks are face coverings made of wood, paper, cloth and other materials with different shapes, ranging from animals, demons, humans, and even gods (usually depending on historical stories and local culture). A mask is an object that is worn over the face. Usually the mask used to accompany the music of local arts. Masks in regional arts are generally to honor gods or clarify character in accompanying art. There are various forms of masks, some depicting angry characters, some depicting gentleness, and some depicting wisdom. Masks have become one of the oldest forms of expression ever created by human civilization. In most of the world's people, masks play an important role in various aspects of life that hold magical and sacred values. This is because of the great role of masks as special symbols in various noble ceremonies and traditional activities. Modern society today places masks as a form of high art. Not only because of the aesthetic beauty it has, but the mysterious side that is hidden in the facial expression of the mask is still able to emit magical powers that are difficult to explain ([Ramalho, 2014](#)).

Mask art is popular in Central Java, Yogyakarta, East Java and West Java. The depiction of masks in Java is closely personified with *wayang* stories. Good and bad characters in *wayang* are made into masks. In some places outside Java, mask art can also be found. Like in Bali, Kalimantan and Makassar. In Bali, Balinese mask art is generally characterized by the *barong* type. The character of Balinese masks cannot be separated from the religious values that are deeply rooted in the people there. The worship of the gods by the Balinese in places of worship (*Pura*) is transformed into the art of masks that give magical powers. While outside Java and Bali, masks are generally associated with the worship of community leaders who are considered to have power. The figures are embodied in the form of masks. Now, masks are not only used with things related to art and religious rituals. The mask is a beautiful accessory to decorate the walls of the room.

Love for mask culture will be meaningless if there is no legal protection. The relevant legal protection is the recording of the work as part of the culture. The Copyright Law provides a guarantee of protection against it. The purpose of writing this scientific journal is to find out more about how to implement copyright protection and what legal remedies can be taken by the sculptor against the plagiarism of the statue. The implementation of copyright protection for the copyrighted works of Wood Topeng Carving tends to be directed at how the violation is detrimental or has an impact on the economic rights of the creator.

II. Method

This type of research is normative legal research because it examines positive legal rules, using the benchmark of Law number 28 of 2014 concerning Copyright ([Vermeule, 2009](#)). This study uses a statutory approach and a conceptual approach regarding Copyright and Masks as cultural heritage. Data collection is done by Library research that exploits library sources in the form of laws and regulations, and references related to copyright and masks as cultural heritage in the form of journals, books and related scientific references. Data analysis was carried out deductively to test general perceptions and analyzed to draw conclusions.

III. Analysis and Discussion

According to Satjipto Rahardjo, the functions of law is as a protection for human interests, and therefore the law must be implemented ([Rahardjo, 2014](#)). Furthermore, Ronny Hanitidjo by combing the opinion of Talcott Parsons, the main function of law is to carry out integration ([Parsons, 1964](#)), namely reducing conflicts and facilitating the process of social interaction ([Soemitro, 2011](#)).

The internal function of the law itself is very influential in human life, especially in economic life. Thomas Aquinas asserted in this context, that the function of law is to seek the welfare of all mankind ([Damich, 1985](#)). The function here is as a framework in the form of rules that guide, provide guidelines for sanctions and tools for social life. The object is all aspects of human life in economic life ([Suhardi, 2002](#)).

Law is a tool that becomes the soul of the nation. The other part is the adoption of external elements, either as a result of association with other nations or because the nation does have interests with these external elements ([Huijbers, 2013](#)). This statement is in accordance with the provisions of the IPR Law, especially regarding Copyright which is a law born of international trade agreements. The legal protection of the Wooden Mask as regulated in this Copyright Law is the adoption of the terms agreed in the *The WTO Agreement* on Trade-Related Aspects of Intellectual Property Rights (*TRIPS*).

According to Jhering, the public interest is at the core of the law. According to him, the interests of the community are divided into four, namely rewards and benefits that are egoistic and dominated by economic motives. Next are moralistic obligations and love ([Huijbers, 2013](#)). The interests of the Indonesian people in the field of intellectual property rights are part of the goals of the Indonesian state as stated in the Preamble to the 1945 Constitution, namely to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in carrying out world order ([Irawan, 2011](#)). And then what is more specifically related to Copyright is the protection of the potential or national intellectual property assets (biodiversity, arts, and culture) that are able to provide benefits in strengthening national identity and economic development. Copyright registration gets many benefits that can be felt by protecting works of art by registering copyright so that in this case academic artists who do not only produce works of art but also share their artistic knowledge with the public can realize the importance of providing protection to works. art that has been created.

Copyright law regulates copyright and the rights contained therein. Namely economic rights and moral rights that are individual or individual. The regulation of rights to traditional cultural expressions is also regulated in the Copyright law, namely in chapter V on traditional cultural expressions and protected works.

The regulation of traditional cultural expressions in the Copyright Law is incomplete and can be said to be inaccurate because in terms of the nature of copyright and rights to traditional cultural expressions, they are not the same. Traditional cultural expressions are communal because they are shared together, while copyright is individual because it is owned by individuals, besides that the period of protection from copyright has a time limit, whereas if the rights to traditional cultural expressions apply, the protection period is not appropriate. Several sources in the media have debated the issue of the form of legislation which is the legal umbrella for the protection of the right to traditional cultural expressions, either in the form of laws or in the form of government regulations. However, until now there has been no concrete action from the government to follow up on the discourse.

In Article 38 paragraph (4) of the Copyright Law it is explained that "Further provisions regarding Copyright held by the State on traditional cultural expressions as referred to in paragraph (1) shall be regulated by a Government Regulation." However, until now there is no government regulation that implicitly regulates the protection of traditional cultural expressions. So based on the results of research from the author that this creates problems for local governments to protect wood art because there are no implementing regulations for the copyright law. So what should be done by the local government at this time is to carry out an inventory of wood art so that unauthorized use does not occur.

Table 1. Setting Offenses in Copyright Crime

No.	Law and regulation	Delik	Keterangan
1.	Auteurwet 1912 Staatsblad Numbe 600 of 1912	complaint offense	
2.	Law No. 6 of 1982 concerning Copyright	complaint offense	Article 45: The criminal act as referred to in Article 44 cannot be prosecuted except on a complaint from copyright holder.
3.	Law No. 7 of 1987 concerning Amendments to Law Number 6 of 1982 concerning Copyrights	ordinary offense	The General Explanation of this Law explains: Still in an effort to increase the effectiveness of prosecution, the provision that copyright infringement constitutes a criminal offense is also considered inappropriate. Such violations should indeed be treated as ordinary crimes. Action, so that it is No. longer solely based on the existence of a complaint Pasal I Angka 17 pada paragraf 1 mengatur: The removed of the provisions of Article 45 of Law Number 6 of 1982, resulting in copyright infringement No. longer being a criminal offense, but an ordinary crime.
4.	Law No. 12 of 1997 concerning Amendments to Law no. 6 of 1992 concerning Copyright as Amended by Law Number 7 of 1987	ordinary offense	
5.	Law Number 19 of 2002 concerning Copyrights	ordinary offense	
6.	Law Number 28 of 2014 concerning Copyright	complaint offense	Article 120: The crime as referred to in this Law is a complaint offense

Source: Authors

When viewed from the table above, it can be concluded that to realize legal protection for creators/copyright holders based on effectiveness and efficiency. In the statement number 3 of the table above, the reason for changing the complaint offense to an ordinary offense in Law No. 7 of 1987 concerning Amendments to Law no. 6 of 1982 concerning Copyright is to increase the effectiveness of copyright criminal action, while based on Law Number 28 of 2014 concerning Copyright academic text report, the changes are again seen based on the effectiveness and efficiency of enforcement,

considering the difficulty of proving in copyright crimes, as a result the types of offenses are usually converted into offenses complaint ([Rasyid, 2020](#)).

If it is related to the Theory of the Working of Law and Effectivity of Law ([Seidman, 1972](#))([Friedman, 1967](#)), then at least two factors that become the bottle neck are actually opportunities for leaps, namely:

1. Society Factor

The curiosity of academic artists who are still lacking about copyright protection can be seen from several reasons, for example, one of them is ignorance of where to register and ignorance of the procedure or mechanism for registering copyright, even though the law has explained what the requirements and processes for registering rights are. create. This can actually be a means for the government to intensify education, socialization and literacy.

2. Culture Factor

The lack of attention from the artists to the importance of copyright protection of the works of art created, for example, on the grounds that there is no obligation to register copyright to the works that have been produced. This cultural barrier can actually be broken through by regulatory coercion, such as in academia, the existence of a ministry regulation obliges every academician to create a scientific work funded by the government with the desired output being Intellectual Property Rights. This means that Intellectual Property Rights have received more attention from the government and as a government award for the contribution of ideas or ideas that are realized in the form of works of art. Another effort that can be done is collaboration between artists and related academics or local governments to facilitate the recording of copyrights from artists.

IV. Conclusion

The lack of education about the procedures and mechanisms for wooden mask craftsmen regarding the authorized institutions to register copyrights for their artworks, because the works of art created are collective, social, and for community service, and there is no obligation to register works of art. Providing this socialization, it is hoped that wooden mask craftsmen register the copyright of their artwork, which is not only as proof of the authenticity of their artwork but in the future it can improve the economy of traditional artists. The government, especially the Ministry of Law and Human Rights, should make changes or revisions to the UUHC regarding the offenses that apply therein. Besides that, educate the whole community, especially the mask makers, to register their rights and also not to plagiarize for the sake of respecting their work morally and economically.

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